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DO DAUGHTERS ALSO HAVE A RIGHT IN FATHER'S PROPERTY

“A daughter remains a loving daughter throughout life”...

– Justice Arun Mishra

INTRODUCTION

The concept of property has an important place in human life and it is also impossible to live without the use of material objects that constitute the object of the property. In a complete sense, it includes life, freedom, reputation, etc. Therefore, there are several laws governing the transfer of ownership, dividing the proportion of property among copayments, etc. and when it comes to dividing the part of a property in India, there were several property laws for sons and daughters until the Hindu Succession Act, 1956, but they were modified and enjoy rights in their kingdom. Several cases have been reported in India, where daughters have been deprived of their property rights. It is a lesser-known fact that the women in the house, too, have the right to claim their share of the property, just like men.

DAUGHTER'S PROPERTY RIGHTS IN INDIA

In India, each child if son/daughter has many rights as a legal heir/share in ancestral properties. As for their ancestral property, both sons and daughters have the same right to such property. The property could only be considered an ancestral property when it was inherited by his or her father's parents, meaning it could be its ancestral property. It is very necessary that the property must be inherited by Grandfather either after the death of his grandfather or in his life if his grandfather had divided the property. The daughter and son are treated in par under co-parcenary. She is also entitled to seek demand from her father's property/ ancestral property too, and also have the right

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to dispose of the same property at her own will. Since Birth, Daughters are fully eligible to take share from her ancestral property as a coparcener.

LAWS GOVERNING THE RIGHTS OF DAUGHTERS IN THEIR FATHERS' PROPERTIES

There are various personal laws (Hindu, Muslim, Christian, and Parsi) as well as constitutional laws on which Daughters have their Rights to property.

Daughters' rights in the Hindu Succession Act, 2005

Previously, when a daughter got married, she ceased to be part of her father's undivided Hindu family, which were seen by many as, limited women's property rights. Then on 9/9/2005, the Hindu Succession Act of 1956, which regulates the transfer of property among Hindus, as amended.¹ Therefore, according to the Amendment of the Hindu Succession Act, 1956 in 2005, Section 6(1) of the Act grants, daughters the status of "coparcener" in the Hindu Undivided Family (HUF). According to the Black's Law Dictionary "coparcener" as a person to whom a property descends jointly, who holds it as an entire estate, i.e. a person who has become a concurrent owner as a result of descent?² Therefore, every daughter, married or unmarried, is now considered as a member of her father's Hindu Undivided family. She can also be named as the 'Karta' or manager of the father's Hindu Undivided family. The amendment now provides for laws that will give daughters the same rights, duties, liabilities, and responsibilities that were previously limited to sons of the HUF. However, a daughter can only benefit from the benefits granted by the amendment if her father died after 9/9/2005. In addition, the daughter can be a co-sharer mainly if the father and daughter were alive on 9/9/2005.

This act now provides equal rights to be the coparceners in HUF. Previously, they were said to include a son, father, grandfather, and great-grandfather. Coparceners obtain a right by birth on the coparcenary property. So, now a daughter as a coparcener, she also shares equal property rights

¹ Hindu Succession (Amendment) Act, 2005, no. 35.

² Black's Law Dictionary. (10th ed.2014).

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in a HUF property from birth. The daughter remains a coparcener regardless of her marital status and can apply for the division of Hindu Undivided Family property. A member of the coparcenary may sell his share of the coparcener to third parties. A coparcener can file a lawsuit by requesting the partitioning of the coparcenary property, but not a member. The daughter is also subject to the same responsibilities as a son, regardless of marital status (married, unmarried, or widow). Therefore, a daughter, as a coparcener, can now request the division of her father's house or business property.

In the case of the deceased daughter, her sons are entitled to the part she would have received if she had been alive on the date of division. In the event that none of your children are alive on division day, her grandchildren will be entitled to receive her share.

Muslim Law

The Muslim law of inheritance derives its principles from four main sources of the Islamic law that are: the holy Quran, the Sunna, that is, the practice of the Prophet, the Ijma, that is, the consent of men learned from a community on a particular point of the law and the Qiya, namely similar deductions of what is right and correct and in line with the principles of God.

Quranic inheritance laws are extraordinarily specific. Under Muslim law, daughters have the right to maintenance and take shelter in their parents' homes until their marriage. Under Muslim law, both Sunni and Shia, a daughter has the right to succeed in parental property, however, there are customs and statutes, the functioning of which excludes a daughter from inheritance. Such customs and statutes are considered valid and daughters as non-existent at the time of the opening of the succession.

Christian law

According to Christian law, a daughter inherits in the same way regardless of her condition that she has siblings or not. You also have every right to personal property reaching most.

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THE PROPERTY RIGHTS OF A DAUGHTER AS A COPARCENER

- Legal Rights on father's property

In the Hindu Succession Act, 1956 the son and daughter weren't treated equally as to the right to property. It provided the right of property to the daughter on father's property until she is married. After which the act got amended as to give equal rights to both son and the daughter.

- Legal Right to be coparceners

Four Generation of family would form a co-parcenary under the Hindu Law. Under the Hindu Succession Act (Amended in 2005), now a married woman has the right to be a coparcener. This enables her legal rights on coparcenary property.

The other rights of Daughters are:

1. The Hindu Undivided Family property right of daughter by birth;
2. Demand partition in a Hindu Undivided Family property;
3. Be a Karta, if she is the eldest coparcener;
4. Right to the succession of her share in the Hindu Undivided Family property to her legal heirs if she dies intestate.

LANDMARK JUDGMENTS

VINEETA SHARMA V. RAKESH SHARMA (2020)³

In this landmark judgment, the Supreme Court ruled that daughters will be entitled to the property of the father, even though the coparcener had died before the date the Hindu Succession (Amendment) Act of 2005 came into force. The court also said that if a daughter is alive on the date of application of the Amendment Act, she becomes a coparcener from the date of the Amendment Act, regardless of the date of birth above at the time.

The judgment implies that daughters will be entitled to the parental property even if the father passed away before the Hindu Succession (Amendment) Act in 2005. Therefore, the Hindu Succession (Amendment) Act 2005 granted the same rights to daughters on ancestral property.

³ Vineeta Sharma v. Rakesh Sharma, (2020), SCC OnLine SC 641.

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Justice Arun Mishra quoted that "daughters must have the same rights as a son; the daughter is still a lifelong loving daughter. The daughter will remain a daughter for life, regardless of whether her father is alive or not." Judges also quoted that "a son is a son until he gets a wife while a daughter is a daughter throughout her life."

By eliminating gender bias in the legal system, the amendment of the law had ensured that "in a Hindu Undivided family governed by the Mitakshara law, the daughter of a coparcener becomes by birth a coparcener in her own way as the son, she has the same rights in coparcenary property that she would have had if she had been a son, and is assigned the same salary that is allocated to a son.

'In another case of *C. N. Arunachala Mudaliar v. C. A. Muruganatha Mudaliar*⁴, the court held that the interest he assumes in such property must depend on the will of the grantor and therefore, when the son has obtained his father's property as a gift, his sons or daughter cannot claim part of it by calling it ancestral property. He can alienate the property given through gift, to whoever he wants and in any way you want. This property is treated as self-acquired property, provided that there is no express intention to write the gift by the grandfather while giving ownership to his child.

CONCLUSION

It is concluded that the apex court refers to the contradiction of the coparcener rights of daughters according to which, regardless of whether the father was alive on or before the date of amendment of the law referring to the interpretation of section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act 2005. But all conflicting decisions are now overturned by the judgment of a three-judge bench. Daughters now have co-parcenary rights to their father's property. Therefore, according to the recent judgment passed, the Amendment act of 2005 was declared retrospective and daughters have the same rights to ancestral property, even though the father died before September 9, 2005. A woman will have the same part of the undivided family property, regardless of whether her father was alive when the law was amended in 2005 or not, noting that the law has a retroactive effect.

⁴ *C. N. Arunachala Mudaliar v. C. A. Muruganatha Mudaliar*, A.I.R. 1953 S.C. 495.